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Argentina
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THE LAW CONCERNING DISAPPEARED PERSONS (22.068)

Modification of the law of adoption

1.- On September 12, 1979, while the Inter-American Commission on Human Rights of the was in Buenos Aires, the Government promulgated Law 22.068 concerning the declaration presumed death of persons absent or disappeared.

Its text had been announced on August 21 by the Minister of the Interior, General Harguindeguy, in a press conference. At that moment, General Harguindeguy presented it a "solution" to the problem of the "disappeared".

Beth the announcement and the sanctioning of that law has provoked repulse, both in the country and abroad. Cardinal Arnz, Archbishop of Sao Paulo, Brasil, compared it to the "final solution" Hitler found for the Jewish problem in Germany: extermination.

More than 500 relatives of "disappeared" persons, with the signature of a group of law and under the auspices of the human rights organizations, have presented before the Federal Courts of Buenos Aires a writ of unconstitutionality of such a norm, that is following course. The writ was presented on November 2.

The law has been presented by the Government and by its inspirers and defenders as a humanitarian initiative, whose purpose is to solve the judicial, familiar and patrimonial problems derived from the prolonged absence or disappearance of persons, a fact that, is well known, reaches in Argentina, since the military coup of March 24, 1976, characteristics without precedents.

However, the brief analysis that follows evidences the true intentions of the Argentine military regime when promulgating this law and the deficiencies of its text, that convey it into a juridical monstrosity.

2.- Law 22.068, for the objectives invoked, is unnecessary. - In fact, Argentine legislation contemplates since its origins - as all world legislations - the situation derived from the prolonged absence or disappearance of persons, and permits judges, by petition from relatives and those juridically interested, that they be declared presumably dead. This authorizes the celebration of new marriages; disposition and transmission of property; the tutorship of unprotected children; contract signings; etc.

Even more, the Argentine Civil Code, in this respect, was substituted in 1954 by a modern and practical law that establishes relatively brief deadlines. It is Law 14.394. This law permits the declaration of presumed death of a person after three years from the last time he was heard of, a period of time that can be reduced to six months in exceptional cases. From what has just been explained, it follows that if there are justifiable reasons, the relatives of the immense majority of "disappeared" persons are in conditions of obtaining the legal means they need, or that they will be in such a position in a short time. There is also no doubt that the indicated periods of time are reasonably brief, and to further reduce them would be illogical and dangerous.

From another viewpoint, the State, empowered by the norms of Law 14.394, through the ~~Ministry~~ ^{Procurador} (the district attorneys that act before the Judiciary and receive instructions from the Executive Power) can ask for that declaration of presumed death, when there is a concrete juridical interest, and invalids or properties to look after.

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In other words; for the intended objectives, both humanitarian and legal, Law 22.068 is unnecessary. Official propaganda, that within the country is received by many citizens that are unaware - as can be expected - of the legislative antecedents, presents it as an indispensable instrument that has the purpose of filling a legal gap and solving an emergency situation. The aforesaid permits us to see that the real objectives are others, of a political nature.

3.- The real objectives of the authors of Law 22.068 can be seen in its contents .-
Let us see in the first place who can present himself before the Judiciary, and with what requirements.

Law 22.068 states, in its Article 2, that the declaration of presumed death may be solicited by the spouse and any relative up to the fourth degree of consanguinity or affinity and by the State through the ~~Public Ministry~~ Prosecutor.-

For such a presentation, the sole indication that there exists a denouncement of disappearance before any authority and the date, is sufficient.

More clearly. Since for the immense majority of the thousands of detained-disappeared persons there exists some denouncement of their disappearance - at the Ministry of the Interior, at the police, or Judiciary - the State can present itself with the certificate of such denouncement massively before the Judiciary and obtain the declaration of presumed death. And for there to be no impediment whatsoever for this sentence and so that the judge may be obliged to dictate it in this sense, Law 22.068 expresses in Articles 2 and 3 the following juridical monstrosity: "The action is exclusive regarding each presentation and in this case the State) and may be exercised in spite of the opposition of other entitled persons (the parents of the "disappeared" person, for example) ... The procedure will not have in any case whatsoever a litigious character". (In general terms, there doesn't exist a trial in the strict sense of the word, because no one can contradict the petition).

As can be seen, nothing has been left at random.

The Argentine Government, by means of General Harguindeguy and the Minister of Justice, in face of the opposition caused by the law, has said that the State will only present itself when there exists family situations (helpless children, for example) or patrimonial uses (for example, vacant inheritances) that require such intervention. But this is admitted by Law 14.394 and numerous stipulations of the Civil Code in force, with the necessary implementations. Thus, if the State could intervene in the indispensable cases and will not present itself massively, why sanction this disposition and grant it such an ample character? What matters about laws are not the presumed intentions of their authors, but the text itself.

In order to defend itself, the Government has also said that in Argentina, as in universal legislation, the State can present itself before the Judiciary to solicit the aforementioned declaration, and that what has been said constitutes no news. This is true. But it's a half truth. Because the State can intervene in these legislations when there exists a concrete juridical interest, and not without any reason whatsoever as concerns the present; never to counter the will of parents and spouses; and always in a contradictory process - that is to say - with the possibility that the relatives affected by this State intervention may defend themselves.

The gravity of all this is that judges, confronted with the presentation of the State or a

distant relative (fourth degree of consanguinity, that is to say, a brother-in-law), are obliged to declare the presumed death without making any investigation at all, and in spite of the eventual opposition of parents or spouse. Can such an atrocity be sheerly imagined? Law 22.068 turns judges into rubber stamps and perfects their well known situation of servants of the political power. This has produced some disgust among certain magistrates, worried in having to become instruments of a declaration of massive deaths and having to support the reaction of thousands of families.

Therefore, there is no doubt that Law 22.068 has a clear-cut political and repressive objective: to declare dead as soon as possible the thousands of detained-disappeared persons and try to have their situation forgotten. It's the "final solution" referred to by Cardinal Arnau.

It's a totalitarian law that hinders the rights of the family. Cardinal Cassaroli said this to Brigadier Lami Dozo, emissary of the Argentine military junta. In spite of all this, the Argentine Episcopate has nothing of the matter.

And as if all that has been said up to now were not enough, to close the circle, Law 22.068 by its Article 2, grants jurisdiction to decree the declaration to federal judges (that is to say, dependent of the central power) in spite of the fact that the matter pertains to a family and patrimonial matter, that traditionally are dealt with by civil judges. The reason for this was explained by one of its inspirers, Dr. Mario Amadeo, Argentine expert in the United Nations' Commission on Human Rights: the federal judges are the political judges "par excellence" and, due to their reduced numbers and to the characteristics of their designation, are the most tied to the Executive Power and, for the same reason, the most devoted and manageable.

4.- Law 22.068, together with other acts and declarations of the Argentine authorities, crudely show the magnitude and gravity of the human rights violations committed by the military regime.

The intention of Law 22.068 is self-evident. If one unites it with the speech given by General Viola on September 29, 1979, where he affirmed that there are people "absent for ever", but that the Armed Forces will give no explanation whatsoever; and to the numerous declarations of General Videla, of Admirals Massera and Lambruschini, and of Brigadiers Agosti and Graffigna (all Commanders or ex-Commanders-in-Chief of the three Forces), that in all wars there are "dead, wounded, prisoners and disappearances", the conclusion is crystal clear. The Armed Forces have clandestinely executed thousands of prisoners, defenselessly detained at their homes, working places or in the street, and now want the Judiciary to issue a massive certificate of death.

This demonstrates the magnitude and gravity of the violations committed, the extension of the murders, and the hypocrisy and cynicism that characterizes the Argentine military regime.

The members of the Argentine Military Junta, during the interview they had on September 7, 1979 with the Inter-American Commission on Human Rights of the OAS, told them that the law of presumed death of the disappeared was a consequence of the pleas of relatives and the national and international human rights organizations. Such an affirmation is completely false. The relatives of "disappeared" persons have risen against the law and refuse to use it. They consider it a symbol of the military regime against which they must fight until it is derogated, and the number of presentations - if there ever are any - will be very few.

And concerning the organizations, the three that exist in the country - that is to say the Permanent Assembly for Human Rights, the Argentine League for the Rights of Man and the Ecumenical Movement for Human Rights, presented themselves in writing to the authors before the sanctioning of the law project, asking that it not be approved, but the note was not even answered. The Inter-American Commission on Human Rights suggested to wait until its opinion was heard and the Government promulgated it while the Commission was in Buenos Aires.

As a matter of fact, Law 22.068 has no precedents in universal legislation. The most similar one is the well-known decree of December 7, 1941 dictated by Adolf Hitler, and called of "night and fog", because it condemns into it the regime's dissidents.

But there is still more. Law 22.068 is only applied to the "disappeared" between November 6, 1974 and September 12, 1979. The previous or subsequent cases are covered by Law 14.394. That is to say, it is an 'ad hoc' law for the detained-disappeared during the repression carried forth by the Armed Forces. And concerning the presumed benefits for those involved it does not improve anything. The only thing the new law accelerates - up to an extreme in which the whole process is a bloody farse - is the declaration of presumed death. In other words, what the regime is interested in.

On the other hand, from that moment onwards, Law 22.068 (see Article 7) remits itself to the procedure established by the previous law and still in force (Law 14.394). That is to say, that for practical reasons, to be able to remarry or to dispose of property, the spouses or hereditors of the presumed dead have to wait for the last deadline established by that norm: five years since the date of absence. Thus, where is the humanitarian preoccupation of the authors of the new law, and the "benefits" for the spouses and so on. This contradiction also demonstrates the purpose of the decision.

5.- The social security law and the modifications to the law of adoption.- With similar objectives in mind, the military government has dictated two other minor dispositions. One of them - Law 22.062 - it is facilitated to the spouses or hereditors of a retired person, having passed one year since his disappearance, that they may be able to receive the corresponding amount. In order to receive it, there is the sole need to present the certification of the denouncement of "disappearance".

In this case, there may be elderly people that could receive some benefit, though the previous legislation also contemplated it. But the presumed humanitarian sense is also ridiculous if one thinks that the immense majority of the detained-disappeared are youngsters, and thus far away from retiring.

Concerning the modifications to the law of adoption, it entails technical reforms, geared aimed at facilitating the paperwork. If these norms are vintilated - that would be very tedious to detail, due to their technical-legislative sinuosity - with the disappearance of hundreds of children detained with their parents, or born in captivity from "disappeared" pregnant women, and the known policy - judicially proved in the Julien case - of giving away these babies to other families, having them lose their identity, it is also easy to deduce the purpose of the modifications.

According to several private assertions given by military chiefs, the purpose of such policy is to prevent that the children of presumed subversives be educated by their grandparents in the same form as their parents were, or with resentment towards the Armed Forces.

Only a totalitarian regime, that places the so-called ideology of national security as a supreme value - surpassing the most elemental human and Christian principles - can reach to these preposterous aberrations. Though it mockingly pretends to erect itself as a defender of the family, morality and Western Civilization.

6.- Other possible consequences of Law 22,068 .-

In the deep document by which the unconstitutionality of Law 22,068 is affirmed, the signing families and sponsoring lawyers warn about other consequences - surely premeditated - to which the declaration of presumed death of the detained-disappeared might lead, according to its text.

There are principally two. The first one is the enervation and plausible rejection of habeas corpus writs. The second is the denial to investigate the whereabouts and situation of the detained-disappeared persons on the part of the penal judges.

If someone has been declared presumably dead, what sense is there in presenting a habeas corpus writ and investigating about his fate?

With this, the legislator incites judges to violate their duties in the formulation of indictments to investigate public crimes, and tries to discourage actions by relatives and justice.

Nevertheless, in the face of such aberrations, with no fear as to the risks involved, the thousands of relatives of detained-disappeared persons have unanimously stood up, and will not hesitate in their purpose to look for - until its last consequences - Justice and Truth.

Buenos Aires, November 1979.

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